

The State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. See 86 Ill. Adm. Code 130.220. (This is a GIL.)

January 26, 2004

Dear XXXXX:

This letter is in response to your letter received by our office on September 5, 2003, in which you request information. Our office did not receive your earlier correspondence. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are a distributor of two-way radio/cell phones that we sell or rent as well as repair. We may own the radio/phones or we may lease them from another party. Service is activated through us and our supplier bills us for the airtime used as well as the various taxes & fees required by federal, state & local agencies on the airtime minutes. Our customer has unlimited use of the phone as a two-way radio, but is charged for cellular minute usage on a pay as you go basis. There are three areas I could not find specific rules or regulations as far as taxability. Consequently, I kindly request guidance with regard to sales tax in these areas. The areas are as follows:

1. **Subleases** -- we may provide phones for 1-time events over a few days and/or weeks. On occasion, we may not have enough units on-hand to meet supply demands, therefore, we lease additional units for which we sub-lease to our customer. We indicate on the invoice & on the rental contract that it is for a **cellular phone sublease**.
2. **Cellular airtime minutes** -- when we activate the phone, the customer has unlimited two-way radio communication at no additional charge, however, if the customer uses the radio as a phone, then they are billed for each minute used. When the customer is invoiced, they are billed however many minutes they used at **so much per minute**.

3. **Sub-contracting** -- a prime contractor contracts with their customers for various communication devices/equipment for which they may or may not purchase from us as well as its installation. The prime contractor hires us as a sub-contractor to do the installation. We invoice the prime contractor for the communication devices/equipment, if they purchased from us and for the installation labor. The invoice may refer to it as **sub-contract work** or as **equipment & labor**.

Please note that the above highlighted information is the description that would be indicated on the invoice to the customer as to what they are being billed.

Please notify in writing, being very specific about their taxability and if there is a particular cite in the law you can reference.

If you need additional information or have any questions, please call me.

Thanking you in advance for your prompt assistance on this matter.

DEPARTMENT'S RESPONSE:

The State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

In regards to cellular airtime minutes, please see the Department's administrative rules regarding the Telecommunications Excise Tax Act. See 86 Ill. Adm. Code 495.

In regards to installation services, Illinois Retailers' Occupation and Use Taxes do not apply to sales of service that do not involve the transfer of tangible personal property to customers. However, if tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon his activities. For your general information, see 86 Ill. Adm. Code 140 regarding sales of service and Service Occupation Tax. For multi-service situations, see 86 Ill. Adm. Code 140.145.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk